

Recommendations to Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities

March 28, 2018

This committee is charged with studying issues surrounding the creation of a mediation and arbitration board to resolve disputes between the owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations.

Recommendations

First, there are a number of existing ADR programs in our state that can be used to provide the services needed in homeowner disputes. So establishing another board or entity to handle this particular type of disputes is not needed. There are not likely to be enough such disputes in each county or region to warrant creating such infrastructure and incurring such costs.

Second, in any program there needs to be an office or person that serves as "clerk of court", in other words, the person who collects complaints and forwards them to the mediator or arbitrator for resolution. Under the current statute 7A-38.3F the Dispute Resolution Commission serves as one of the collectors of complaints. The Commission's primary function is to regulate the practice of mediation in our state courts. It does not collect cases and then select the mediator who will handle each case. The Commission should be relieved of such a role which is not consistent with its primary charge. The existing programs suggested below do have such "clerks of court" in place.

Third, one of the features that has made mediation the amazing success it has been in our state trial courts is its mandatory nature. Parties are required to attend and participate. Requiring participation is not unduly burdensome, particularly if the cost is kept low. Although participation may be required, any resolution will be only by agreement of the parties and with their consent. If the mediation does not work, either party can still proceed to court or any other venue currently available to resolve their dispute.

Fourth, using highly trained and highly skilled certified mediators from the Mediated Settlement Conferences in Superior Court program is not a cost effective way of handling these neighborhood disputes. These disputes are more akin to the barking dog and improperly parked car disputes that are the bread and butter of local dispute settlement centers, most of whom are part of the Mediation Network of NC. These centers use trained, experienced volunteer mediators and can provide this service at a much lower cost than MSC certified mediators. The parties could be able to hire an MSC mediator if they choose to pay that additional cost.

Fifth, if arbitration is an alternative that the legislature believes would be effective in this arena, then the parties can be given access to the District Court Non-binding Arbitration program (7A-37.1). While the usual case in that program is referred by the trial court after a complaint has been filed, a structure can be developed allowing these homeowner cases direct access to

arbitration without having first filed a complaint in court. I think the Commission would be happy to assist in designing such a mechanism.

Both mediation and non-binding arbitration preserves the right of all parties to have the dispute heard in court before a judge or jury. But history has shown that these programs have a high settlement rate and a high satisfaction rate. Even if the parties do not get all that they wanted, they are glad of the opportunity to resolve the matter privately and get the dispute behind them. If both arbitration and mediation are to be offered in this new program, this Committee could consider having the person bringing the dispute to the ADR program would choose either mediation or arbitration. The responding party would be required to participate, but would have the option of choosing the other resolution method if they want. The parties would equally split the cost of the process unless they agree to a different payment plan. The arbitration cost is fixed in the statute at \$100. A similar fee could be fix for the mediation process.

If I can be of any assistance, I would be happy to help.

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Disclaimer: I was invited to speak on behalf of the dispute Resolution Commission. However, the Commission has not had time to examine this issue and develop a response or suggestion. I am speaking on my own behalf. However, I have been involved in design and implementation of dispute resolution systems in the NC courts and other venues in our state over 30 years. I was a leader in the design and implantation of all of the court based and most of the ono-court based dispute resolution systems in our state. I currently work for the US Courts as a mediator, but I do not speak for them.